

So Ordered.

Dated: November 13th, 2024



Frederick P. Corbit

Frederick P. Corbit
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re

1 MIN, LLC; HOTEL AT SOUTHPORT,
LLC; and TWELFTH FLOOR, LLC,

Debtors.

Chapter 11

Lead Case No. 24-01519

(Jointly Administered)

ORDER SUSTAINING LIMITED
OBJECTION TO JOINT PLAN
AND DISCLOSURE STATEMENT
AND DIRECTING DEBTORS TO
FILE AMENDED JOINT PLAN
PROVIDING FOR ADEQUATE
RESERVES

THIS MATTER came before the Court at hearings held on November 7 and 12, 2024, on confirmation of *Debtors' Joint Plan of Reorganization* [ECF No. 9] (the "Plan") pursuant to 11 U.S.C. §§ 1121-1124, 1126 and 1129, Bankruptcy Rules 3017 and 3018, and Local Rule 3018-1.¹ After considering the presentations of counsel at the November 12, 2024 hearing, the Court finds and concludes as follows:

¹ Unless otherwise specified, all "chapter" and "Section" references are to the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*; all "Bankruptcy Rule" references are to the Federal Rules of

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1 A. The only objection to confirmation of the Plan was the *Limited Objection*
2 *to Joint Plan & Disclosure Statement & Reservation of Rights* (ECF No. 98) (the
3 “Limited Objection”), filed on behalf of plaintiffs (the “EB-5 Plaintiffs”) in the lawsuit,
4 *Lan Cai et al., v. Christ, et al.*, King County Superior Court No. 24-2-04850-2, in
5 which the EB-5 Plaintiffs assert various claims (the “EB-5 Plaintiffs’ Claims”) against
6 the Debtors and other non-debtor defendants.

7 B. In the Limited Objection, the EB-5 Plaintiffs stated that, in order to fully
8 resolve their Limited Objection, “the full amount of the damages asserted in the EB-5
9 Complaint (\$32.45 million) should be fully reserved at the Hotel Debtor
10 entity.” *Limited Objection* at 4 fn. 1. However, the EB-5 Plaintiffs held open the
11 prospect of resolving the Limited Objection in a manner short of reserving the \$32.45
12 million at the Hotel Debtor entity: “As a practical matter, EB-5 Plaintiffs believe there
13 are three reasonable routes to resolve this Limited Objection without unduly delaying
14 the proposed Plan confirmation and sale process.” *Limited Objection* at 7. The first
15 such means proposed in the Limited Objection would be for “The Debtors and EB-5
16 Plaintiffs [to] agree on appropriate Disputed General Unsecured Claim reserve amounts
17 (or Allowed Claim amounts) at each debtor that would ensure appropriate potential
18 recovery for EB-5 Plaintiff Claims if allowed, which would eliminate any concern from
19 the EB-5 Plaintiffs concerning distributions that may otherwise render the EB-5
20 Plaintiff claims valueless;” *Id.*

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Bankruptcy Procedure; and all “Local Rule” references are to the Local Rules and Local Forms,
respectively, for the Bankruptcy Court for the Eastern District of Washington.

1 C. The Debtors previously listed the EB-5 Plaintiffs Claims as disputed,
2 contingent and unliquidated in their schedules of assets and liabilities filed in
3 connection with the commencement of these cases on September 20, 2024 (the
4 “Petition Date”).

5 D. On October 21, 2024, the Debtors also filed an objection to the EB-5
6 Plaintiffs’ Claims, requesting (among other relief) that such claims be disallowed. *See*
7 ECF No. 89.

8 E. On November 4, 2024, the EB-5 Plaintiffs filed identical proofs of claim
9 in each of the Debtors’ chapter 11 cases, in each case asserting a claim in the amount of
10 \$32,450,000, but did not file a motion seeking to have their claims estimated under
11 Section 502(c) for purposes of voting on the Plan.

12 F. At the conclusion of the November 7, 2024, hearing, the Court established
13 a schedule (the “Claim Estimation Schedule”) for the submission of briefing,
14 declarations and other materials for estimation of the EB-5 Plaintiffs’ Claims. *See* ECF
15 No. 107. The Court’s intention in setting the Claim Estimation Schedule was to allow
16 the Court the ability to enter an order estimating the EB-5 Plaintiffs’ Claims not later
17 than November 26, 2024.

18 G. At the November 12, 2024, hearing, counsel for the Debtors advised the
19 Court that the Debtors had reached agreement with WF CREL 2020 Grantor Trust (the
20 “Secured Lender”), the holder of the lender’s interests in a senior loan to debtor Hotel
21 at Southport, LLC (“Hotel Debtor”) in the principal amount of \$90,000,000, and a
22 mezzanine loan to debtor Twelfth Floor, LLC (“Mezz Debtor”) in the principal amount
23 of \$40,000,000, pursuant to which, after payment in full of claims in Class 1 and

1 Class 4 of the Plan and allowed administrative expense claims, proceeds from the sale
2 of Hotel Debtor's assets (the "Sale") in the amount of \$32,450,000 (the full amount of
3 the EB-5 Plaintiffs' Claims as set forth in the relevant proofs of claim) would be
4 reserved and held by Hotel Debtor pending further proceedings in connection with this
5 Court's allowance or disallowance of the EB-5 Plaintiffs' Claims, with the remaining
6 net proceeds of the Hotel Debtor estate, including the remaining proceeds from the
7 Sale, being distributed to Mezz Debtor for partial payment of the Class 2 Claim under
8 the Plan.

9 H. The proposed reservation of funds would resolve the Limited Objection
10 according to its terms, eliminate the need for the Court to estimate the EB-5 Plaintiffs
11 Claims for purposes of reserving funds from proceeds of the Sale, allow for the
12 confirmation of an amended form of the Plan consistent with the Court's comments at
13 the November 7 hearing, and permit the parties ample time to resolve issues related to
14 the EB-5 Plaintiffs' Claims following the closing of the Sale.

15 NOW, THEREFORE, IT IS HEREBY

16 ORDERED as follows:

17 1. The Limited Objection is sustained, subject to the First Amended Plan and
18 Confirmation Order conforming with the resolution of the Limited Objection as
19 outlined in this order and at the November 12, 2024 hearing.

20 2. Not later than November 19, 2024, the Debtors shall submit:

21 a. an amended Plan (the "First Amended Plan") that (i) modifies the
22 Plan to incorporate the changes the Court directed at the conclusion of the November 7,
23 2024 hearing; (ii) provides that, from the proceeds of the closing of the Sale, after full

1 payment of claims in Class 1 and Class 4 and all administrative expense claims, funds
2 in the amount of \$32,450,000 shall be reserved and held by Hotel Debtor pending
3 further proceedings and entry of an order allowing or disallowing the EB-5 Plaintiffs'
4 Claims; and (iii) directs that any remaining proceeds of the Hotel Debtor estate,
5 including the remaining proceeds from the Sale, be distributed to Mezz Debtor for
6 partial payment of the Class 2 Claim under the Plan; and

7 b. a proposed order confirming the First Amended Plan consistent with
8 the foregoing.

9 ///End of Order///

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